

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 96019

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-032-97

DOCUMENTS INCLUDED IN THIS FILE:

YES SECRETARY OF STATE FILING FORM

YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B

REGULATORY PETITIONS

ORIGINAL DRAFTED BY COMMISSION

ADOPTED BY COMMISSION

YES AS FILED AND CODIFIED BY LCB

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Governor's Signature

State Environmental Commission

Classification [] Proposed [] Adopted By Agency [xx] Temporary [] Emergency []

Brief description of action: Petition 96019 (LCB File R-032-97) permanently amends NAC 486A.010 through 486A.250, the Alternative Fuels program. The adopted regulation clarifies definitions, and the credit program in NAC 486A.170 is repealed. A new section is added that exempts from program requirements counties with less than 100,000 persons. NAC 486A.180 expands reporting requirements.

Authority citation other than 233B: NRS 445B.210 and NRS 486A.150

Notice date: August 21, August 27 and September 2, 1997

Hearing date: September 23, 1997

Date of Adoption of Agency: September 23, 1997

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
PETITION 96019 (LCB R-032-97)**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 486A.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Petition 96019 (LCB R-032-97) was noticed four (4) times: February 4, February 5, February 12 and February 20, 1997 as temporary regulation and three times; August 21, August 27 and September 2, 1997 in the Las Vegas Review Journal and the Reno Gazette-Journal newspapers. The public was also mailed the public notice through the Environmental Commission's mailing list. Public comment was received from the City of Las Vegas and the Nevada Senior Citizens Coalition. During the temporary adoption the City of Las Vegas commented that a part of the problem in complying with the deadlines involved in the alternative fuels program was to due to lack of available conversion kits and that the lack of an alternative fuel diagnostic computer chip was a problem. The Nevada Seniors Coalition commented that Commission should not step back from the compliance schedule for making public fleets comply with the alternative fuels requirements. During the permanent adoption the Clark County School District and the Washoe County School District expressed that it was expensive to comply with the fleet conversion requirements and to pay for the higher premium cost of fuels and supporting infrastructure. The State Motor Pool also express concern that the compliance schedule for alternative vehicle acquisition was difficult to comply, due to the lack of alternative fuel infrastructure in rural Nevada and the lack of availability of bifueled and alternative passenger vehicles. Clark County was supportive of the proposed permanent petition citing the tremendous strides in changing the vehicle fleets to alternative fuels by the county and cities in Las Vegas. The State Energy Office and Southwest Gas Corp submitted comments supportive of the permanent petition. A public workshop was held on September 9, 1997 and comments were received from the State Motor Pool and Clark County. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 extension 3117, or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

2. The number persons who:

- | | | |
|------------|--|-----------|
| (a) | Attended each hearing; | 22 |
| (b) | Testified at each hearing: | 14 |
| (c) | Submitted to the agency written comments: | 8 |

Note: Written comments were received from Southwest Gas Corp, Nevada State Energy Office, State Motor Pool, and the Clark County School District.

3. A description of how comment was solicited from affected businesses, a summary of their response, and a explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. The Bureau of Air Quality sent draft regulations to affected businesses and public entities. Southwest Gas Corp objected to the relaxation of the compliance schedule for requiring public fleets to comply with purchasing of alternative fueled vehicles. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

Amendments requested to reduce the compliance schedule for acquisition of alternative vehicles, however no formal motion was requested or debated, nor acted upon to relax the schedule at the September 23, 1997 hearing.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects: and
- (b) Both immediate and long-term effects.

There will be no anticipated adverse economic impact to businesses in the short or long term. The proposed regulatory changes will have a limited financial impact on the public institutions in counties over 100,000 persons. The general public or businesses will not have a short and long term economic impact from the regulation.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There will be no additional cost to the agency as a result of the addition of the proposed regulations.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agencies which the proposed regulation overlaps or duplicates.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

This regulation is no more stringent than federal requirements. Requirements for alternative fuels for public agencies is driven by state statute that pre-dates a similar, but not equivalent federal law that mandates alternative fueled vehicles. The federal definitions as what is considered to be an alternative fuel are more stringent than those imposed by NRS 486A.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

No new fee is proposed nor is a fee increased by this regulation.

END OF FILING STATEMENT FOR 96019 (LCB R-032-97)

ADOPTED PERMANENT REGULATION OF THE NEVADA STATE ENVIRONMENTAL COMMISSION

LCB File No. R-032-97
Petition 96019

Explanation: Matter in *italics* is new language. Matter in [] is material to be omitted.

AUTHORITY: NRS 445B.210 and NRS 486A.150

Section 1. Chapter 486A.030 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. "Alternative fuel" means:

1. *Any fuel which is usable in an alternative fuel retrofit system for motor vehicles that complies with the provisions of NAC 486A.150;*
2. *Methanol, ethanol or other alcohol, or any mixture thereof containing 85 percent or more by volume of such alcohol with gasoline or other fuels;*
3. *Reformulated gasoline which complies with the regulations adopted by the United States Environmental Protection Agency pursuant to the standards for the control of emissions from motor vehicles established by the Clean Air Act Amendments of 1990 (Pub. L. No. 101-549, Nov. 15, 1990);*
4. *Low-sulfur diesel fuel which complies with the regulations adopted by the United States Environmental Protection Agency pursuant to the standards for the control of emissions from motor vehicles established by the Clean Air Act Amendments of 1990 (Pub. L. No. 101-549, Nov. 15, 1990);*
5. *Natural gas;*
6. *Liquefied petroleum gas;*
7. *Hydrogen;*
8. *Liquid fuels derived from coal or other source of power, including, but not limited to electricity; and*
9. *Any other fuel designated as an alternative fuel by the administrator of the division of environmental protection of the department pursuant to NAC 486A.140.*

Sec 3. Alternative fuel vehicle" means:

1. *A bi-fueled motor vehicle as defined by NRS 486A.040;*
2. *A dedicated alternative fuel motor vehicle, as defined in NRS 486A.060; or*
3. *A flexible fueled vehicle, as defined in NRS 486A.090.*

Sec. 4. "Fleet" has the meaning ascribed to it in NRS 486A.080.

Sec. 5. The provisions of this chapter do not apply to:

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- 1. The operator of a fleet that operates only in a county whose population is less than 100,000.*
- 2. Any governmental agency exempted by federal statute or regulation.*
- 3. Any person exempted by the commission.*

Sec. 6 NAC 486A.010 is hereby amended to read as follows:

486A.010 As used in [NAC 486A.010 to 486A.240, inclusive,] *this chapter*, unless the context otherwise requires, the words and terms defined in NAC 486A.020 to 486A.100, inclusive, *and sections 2,3 and 4 of this regulation* have the meanings ascribed to them in those sections.

Sec. 7. Chapter 486A.140 is hereby amended to read as follows:

486A.140 1. The administrator of the division of environmental protection of the department may designate a fuel as [a clean] *an* alternative fuel. A person who wishes to have a fuel designated as [a clean] *an* alternative fuel must submit to the administrator a written request which includes evidence that the fuel complies with the requirements set forth in subsection 2.

2. A fuel designated as [a clean] *an* alternative fuel by the administrator must:

(a) When used to operate a motor vehicle:

(1) Reduce the emissions of one or more regulated pollutants to a level below the level of emissions generated when the fuel for which the designated fuel serves as [a clean] *an* alternative is used to operate a motor vehicle;

(2) Generate emissions which are within the limits established pursuant to NAC 445B.596 for all regulated pollutants; and

(3) Generate emissions which are measurable using testing procedures approved by the division; and

(b) Be capable of being safely transported in bulk, handled during fueling and used to operate motor vehicles which are converted or manufactured to use the fuel.

3. Not less than 30 days before a fuel is designated as [a clean] *an* alternative fuel pursuant to subsection 1, the administrator shall provide a notice of intent to designate the fuel as [a clean] *an* alternative fuel to each person who has requested that his name be placed on a mailing list maintained by the division for the purpose of providing that notice. The administrator shall cause the notice to be published at least once in newspapers of general circulation throughout the state.

Sec. 8. NAC 486A.150 is hereby amended to read as follows:

486A.150 [The standards and requirements adopted by] *An alternative fuel retrofit system for motor vehicles is approved for use in this state if it has been certified by the United States Environmental Protection Agency or the California Air Resources Board [on May 14, 1992, entitled Fuel Retrofit Systems for Motor Vehicles certified for 1994 and Subsequent Model Years for Low Emission Vehicles,"* are hereby adopted by reference. The standards and requirements are published at sections 2030 and 2031 of Title 13, California Code of Regulations. A copy of the standards and requirements may be obtained free of charge from the following address:

Nevada Bureau of Air Quality
Mobile Source Branch
333 West Nye Lane
Carson City, Nevada 89710], *or both.*

Sec. 9. NAC 486A.160 is hereby amended to read as follows:

486A.160 1. [All covered fleets, including those] *The operator of a fleet, including, but not limited to, the operator of a fleet* with buses and heavy-duty trucks, must obtain [clean] alternative fuel vehicles in the following percentages of vehicles acquired or replaced, in compliance with the following schedule:

Fiscal year 1995	10 percent
Fiscal year 1996	15 percent
Fiscal year 1997	25 percent
Fiscal year 1998	50 percent
Fiscal year 1999	75 percent
Fiscal year 2000 and each year thereafter	90 percent

2. If the number of vehicles purchased, leased or otherwise acquired by *the operator of a [covered]* fleet in any 1 year when multiplied by the percentage specified in subsection 1 contains a fraction, the number of vehicles required to be [clean] alternative fuel vehicles [shall be increased to the next] *must be rounded off to the nearest* whole number.

3. [A covered] *The operator of a* fleet may meet the requirements of this section by converting existing or newly acquired vehicles to [clean] alternative fuel vehicles.

Sec. 10. NAC 486A.180 is hereby amended to read as follows:

486A.180 1. The vehicles acquired in compliance with NAC 486A.160 must be operated solely on [clean] *an* alternative fuel except when operating in an area where the appropriate [clean] alternative fuel is unavailable.

2. [The operator of a covered fleet shall report any exception to the exclusive use of clean alternate

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fuel to the department in writing not later than the last day of each month. The report must describe and explain the use of any fuel during the last 30 days which is not a clean alternative fuel.

3.] The operator of a **[covered]** fleet shall compile records of all fuel used on a monthly basis. The records must be:

(a) Available for inspection not later than 30 days~~;~~ *after the end of the month for which the records were compiled;* and

(b) Maintained for a period of 2 years~~;~~ *after the end of the month for which the records were compiled.*

3. Not later than 30 days after the end of each fiscal year, the operator of a fleet shall file a written report with the director which specifies for that immediately preceding fiscal year:

(a) The number of vehicles purchased;

(b) The number of vehicles purchased that are alternative fuel vehicles;

(c) The number of existing vehicles that were converted to alternative fuel vehicles; and

(d) For each vehicle included in paragraph (a), (b) or (c);

(1) The vehicle identification number;

(2) The make, model and year of manufacture; and

(3) The type of fuel used by the vehicle.

Sec. 11. NAC 486A.190 is hereby amended to read as follows:

486A.190 The director may require *the operator of a [covered]* fleet to file with the department any reports ~~[he]~~ *that the director* determines are necessary to implement or enforce **[NAC 486A.010 to 486A.240, inclusive.]** *the provisions of this chapter.*

Sec. 12. NAC 486A.200 is hereby amended to read as follows:

486A.200 1. The director may exempt *the operator of a [covered]* fleet from any provision of **[NAC 486A.010 to 486A.240, inclusive, if he]** *this chapter if the director* determines that:

(a) **[Clean alternative]** *Alternative* fuel vehicles meeting the requirements of **[a covered fleet]** *this chapter* are not available for purchase, lease or acquisition by other means; or

(b) A commercial facility which sells **[clean]** alternative fuel is not available in the area in which the **[covered]** fleet is operated, and providing a facility to dispense **[clean]** alternative fuel would be economically impracticable for the **[covered]** *operator of the* fleet.

2. [The director may exempt an emergency vehicle from the requirements of NAC 486A.010 to 486A.240, inclusive, if good cause is shown for the exemption. The applicant seeking an exemption must demonstrate why the emergency vehicle cannot operate on clean alternative fuel.

3.] An exemption granted by the director pursuant to subsection 1 **[or 2]** must be for an initial period of not more than 12 months and may be renewed for additional periods of not more than 12 months.

Sec. 13. NAC 486A.210 is hereby amended to read as follows:

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486A.210 1. If the director believes that **[an owner or operator of a covered fleet]** *a person* has failed to comply with the provisions of chapter 486A of NRS or **[NAC 486A.010 to 486A.240, inclusive, he]** *this chapter, the director* shall cause written notice to be served upon the person **[or persons]** responsible for the alleged violation.

2. Written notice shall be deemed to have been served if delivered to the person to whom addressed or if sent by registered or certified mail to the last known address of the person.

3. The notice must specify:

(a) The statute or regulation alleged to be violated; and

(b) The facts alleged to constitute the violation.

4. The notice may include an order to take corrective action within a reasonable time, which must be specified. Such an order becomes final unless, within 10 days after service of the notice, a person named in the order requests a hearing before the commission.

5. With or without the issuance of an order pursuant to subsection 4, or if corrective action is not taken within the time specified:

(a) The director may **[notify the person or persons]** *require a person* responsible for the alleged violation to appear before the commission at a specified time and place; or

(b) The commission may initiate proceedings for recovery of the appropriate penalty.

6. This section does not prevent the commission or the director from obtaining voluntary compliance by issuing a warning, holding a conference or by any other appropriate means.

Sec. 14. NAC 486A.220 is hereby amended to read as follows:

486A.220 1. Except as otherwise provided in subsection 3, any violation of the provisions of chapter 486A of NRS or **[of NAC 486A.010 to 486A.240, inclusive,]** *this chapter* is a major violation. The commission may impose a fine of up to \$5,000 for each violation.

2. In determining the amount of a penalty to be imposed for a major violation, the commission will consider:

(a) The size of the **[covered]** fleet;

(b) The economic impact of the penalty on the **[covered]** fleet;

(c) The violator's good faith efforts to comply;

(d) The duration of the violation as established by any credible evidence;

(e) The prior record of violations by the operator of the **[covered]** fleet;

(f) The economic benefits of noncompliance; and

(g) The seriousness of the violation.

3. Except as otherwise provided by subsection 4, the following offenses are minor violations:

(a) Failure to operate *a vehicle* on **[clean]** *an* alternative fuel without justification;

(b) Failure to file **[reports of fuel use]** *a report* in a timely manner as required by NAC 486A.180; **[and]**
or

(c) Failure to file **[reports]** *a report* required by the director pursuant to NAC 486A.190.

4. All minor violations become major violations upon the fourth occurrence of the same offense by the **[covered]** fleet within a period of 60 consecutive months.

5. The commission will assess fines for minor violations consistent with the following schedule:

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	First Offense	Second Offense	Third Offense
Failure to operate <i>a vehicle</i> on [clean] <i>an</i> alternative fuel without justification.	\$250	\$500	\$750
Failure to file <i>a</i> report [of fuel use] in a timely manner as required by NAC 486A.180.	\$250	\$500	\$750
Failure to file [reports] <i>a report</i> required by the director pursuant to NAC 486A.190.	\$250	\$500	\$750

Sec. 15. Chapter 486A.250 is hereby amended to add a new chapter:

486A.250 1. Any person who requests a hearing before the [state environmental] commission concerning a final decision of the [state department of conservation and natural resources] *department* pursuant to chapter 486A of NRS may do so by filing a request, within 10 days after notice of the action of the department, on form 3* with the State Environmental Commission, 333 West Nye Lane, Capitol Complex, Carson City, Nevada 89710.

2. The provisions of NAC 445B.460 to 445B.897, inclusive, apply to a hearing of the [state environmental] commission requested pursuant to subsection 1.

*(See adopting agency for form.)

Sec. 16. NAC 486A.030, 486A.040, 486A.060, 486A.070 and 486A.170 are hereby repealed.

END OF LCB File No. R-032-97

TEXT OF REPEALED SECTIONS

486A.030 "Clean alternative fuel" defined. "Clean alternative fuel" means:

1. Any fuel usable by a clean alternative fuel vehicle which complies with the standards and requirements applicable to such vehicle established by the California Air Resources Board, as adopted by reference in NAC 486A.150;
 2. Methanol, ethanol or other alcohol, or any mixture thereof containing 85 percent or more by volume of such alcohol with gasoline or other fuels;
 3. Reformulated gasoline which complies with the regulations adopted by the United States Environmental Protection Agency pursuant to the standards for the control of emissions from motor vehicles established by the Clean Air Act Amendments of 1990 (Pub. L. No. 101-549, Nov. 15, 1990);
 4. Low-sulfur diesel fuel which complies with the regulations adopted by the United States Environmental Protection Agency pursuant to the standards for the control of emissions from motor vehicles established by the Clean Air Act Amendments of 1990 (Pub. L. No. 101-549, Nov. 15, 1990);
 5. Natural gas;
 6. Liquefied petroleum gas;
 7. Hydrogen;
 8. Liquid fuels derived from coal or other source of power, including electricity;
- and
9. Any other fuel designated as a clean alternative fuel by the administrator of the division of environmental protection of the department pursuant to NAC 486A.140.

(Added to NAC by Environmental Comm'n, eff. 11-23-92; A 11-9-95; 11-9-95)

486A.040 "Clean alternative fuel vehicle" defined. "Clean alternative fuel vehicle" means a motor vehicle that:

1. Operates solely on clean alternative fuel; or
2. Is a flexible fueled vehicle which is capable of operating on a clean alternative fuel as the primary

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source of fuel.

(Added to NAC by Environmental Comm'n, eff. 11-23-92)

486A.060 "Covered fleet" defined. "Covered fleet" means 10 or more motor vehicles, excluding motorcycles or mopeds, which are owned, leased or operated by the state, any state agency or any political subdivision of the state operating in a county whose population is 100,000 or more.

(Added to NAC by Environmental Comm'n, eff. 11-23-92)

486A.070 "Credit" defined. "Credit" means a unit allocated to a covered fleet by the director which may be redeemed in lieu of acquiring a clean alternative fuel vehicle in a subsequent year or which may be sold to another covered fleet for redemption by that fleet.

(Added to NAC by Environmental Comm'n, eff. 11-23-92)

486A.170 Credits: Allocation and granting; effect; transfer.

1. The director shall:

(a) Allocate one credit for each clean alternative fuel vehicle acquired or converted by a covered fleet in excess of the percentage of clean alternative fuel vehicles the covered fleet is required to obtain pursuant to NAC 486A.160. The credit allocated must be for the same type of vehicle as the one for which the credit was earned.

(b) Allocate one credit per clean alternative fuel vehicle For each year the vehicle is acquired or converted before the date required by NAC 486A.160. The credit allocated must be for the same type of vehicle as the one for which the credit was earned.

2. The director may:

(a) Grant one credit for each clean alternative fuel vehicle a covered fleet has in operation on November 23, 1992.

(b) Grant one-half credit for each vehicle in a covered fleet which uses a clean technology diesel engine before the date that such engine technologies are mandated by Title 2 of the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, November 15, 1990.

(c) Grant one-fourth credit for each vehicle in a covered fleet that operates with a diesel engine which

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complies with the California certification standards applicable to the vehicle's year of manufacture pursuant to Title 2 of the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, November 15, 1990.

(d) During the 3 years immediately following November 23, 1992, allocate five additional credits to a covered fleet for constructing and operating a fueling station which dispenses clean alternative fuel.

3. To determine whether a covered fleet has complied with the requirements of NAC 486A.160, the director shall consider one credit as the purchase of one clean alternative fuel vehicle of the same type for which the credit was originally allocated and for the year designated by the operator of the covered fleet. A credit may be counted toward compliance for 1 year only.

4. A covered fleet which has received a credit may transfer it to another covered fleet after first notifying the director in writing of the transfer. A credit may be transferred without regard to whether the transferor initially received the credit by allocation from the director or by way of transfer. The director shall consider a credit transferred to a covered fleet no differently than one which is originally allocated by him to a covered fleet.

(Added to NAC by Environmental Comm'n, eff. 11-23-92)

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